

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director

Date: January 11, 2006

From : Kristine Cazadd, Chief Counsel
Legal Department 

Subject : *Regulation 4905, Payment by Electronic Funds Transfer*
(January 31, 2006 Chief Counsel's Rulemaking Calendar)

Effective July 7, 2005, the Board promulgated Regulation 4905, *Payment by Electronic Funds Transfer*, to implement and interpret the Revenue and Taxation Code governing the electronic funds transfer (EFT) payment requirements for the following twenty tax and fee programs administered by the Property and Special Taxes Department:

Motor Vehicle Fuel Tax; Aircraft Jet Fuel Tax; Use Fuel Tax; Cigarette and Tobacco Products Tax; Alcoholic Beverage Tax; Energy Resources Surcharge; Emergency Telephone Users Surcharge; Childhood Lead Poisoning Prevention Fee; Hazardous Substances Tax; Occupational Lead Poisoning Prevention Fee; Integrated Waste Management Fee; Oil Spill Response Fee, Prevention and Administration Fees; Underground Storage Tank Maintenance Fee; Marine Invasive Species Fee (Ballast Water Management Fee); California Tire Fee; Natural Gas Surcharge; Water Right Fee; Electronic Waste Recycling Fee; and Diesel Fuel Tax.

In October 2005, Assembly Bill 1765 (Stats. 2005, Ch. 519) deleted a provision in Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250 that states a person whose monthly tax liability does not meet or exceed the threshold for mandatory participation in the EFT program, but who voluntarily elected to participate in the EFT program, to remain in the program for a minimum of one year. Accordingly, Regulation 4905 must be amended to delete the language that explains that a person who voluntarily participates in the EFT program must remain in the program for a minimum of one year.

An additional revision to the regulation is proposed for clarification purposes only. In subdivision (b)(2), Regulation 4905 explains that, to participate in the EFT program on a voluntary basis, a person must first "register" with the Board. The word "register" may lead to confusion, since "register" is often used to mean "obtain a tax or fee permit." As explained in Special Taxes Publication 89, *Electronic Funds Transfer Information Guide*, a person must file an "authorization agreement" with the Board prior to voluntary participation in the EFT program. Staff proposes, for clarification purposes, to replace the word "register" with the phrase "file an authorization agreement."

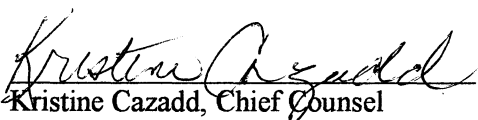
We request your approval to place the matter on the January 31, 2006 Chief Counsel's Rulemaking Calendar for Board authorization to amend the regulation as Rule 100 changes without the normal notice and hearing process. These changes are appropriate for processing under Rule 100 because they implement new legislation and clarify an existing requirement of the EFT program without altering taxpayers' responsibilities under that program.

Attached is the strikeout and underlined version of the regulation.

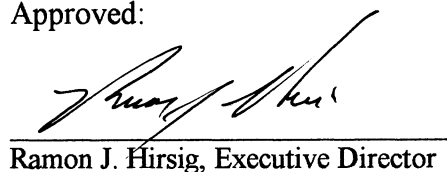
If you have any questions regarding this request, please let me know or contact Mr. Todd Keefe at 327-7063.

KC:tk
Attachment

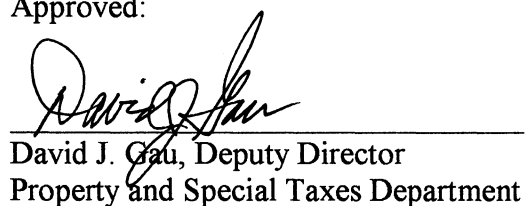
Recommendation by:


Kristine Cazadd, Chief Counsel

Approved:


Ramon J. Hirsig, Executive Director

Approved:


David J. Gau, Deputy Director
Property and Special Taxes Department

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

cc: Ms. Selvi Stanislaus (MIC:82)
Ms. Carolee Johnstone (MIC:82)
Ms. Deborah Pellegrini (MIC:81)
Mr. David J. Gau (MIC:63)
Mr. Ed King (MIC:33)
Ms. Lynn Bartolo (MIC:56)
Mr. Dave McKillip (MIC:56)
Mr. Vic Day (MIC:56)
Mr. Todd Keefe (MIC:56)

Proposed Revisions to Regulation 4905

Regulation 4905. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

Reference: Sections 7659.9, 7659.92, 8760, 8762, 30190, 30192, 32260, 32262, 40067, 40069, 41060, 41062, 43170, 43172, 45160, 45162, 46160, 46162, 50112.7, 50112.9, 55050, 55052, 60250, and 60252, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax or fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(5) "Federal Reserve Wire Transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250 may be made by Federal Reserve Wire Transfer only if payment cannot, for good cause, be made according to subdivision (a) (1) of this regulation, and the use of Federal Reserve Wire Transfer is preapproved pursuant to subdivision (g) of this regulation. Banking costs incurred for the Federal Reserve Wire Transfer transaction charged to the person and to the state shall be paid by the person originating the transaction.

(b) PARTICIPATION.

(1) MANDATORY PARTICIPATION. Persons with an estimated monthly tax or fee liability of twenty thousand dollars (\$20,000) or more under the applicable part of the Revenue and Taxation Code, are required to remit amounts due by electronic funds transfer under procedures set forth in this regulation. To identify mandatory participants, the Board shall conduct a periodic review of all persons with licenses, permits, or other authorization under sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250. The review is performed by calculating an average monthly tax or fee liability for a twelve-month period. Persons whose average monthly tax or fee liability equals or exceeds twenty thousand dollars will be required to remit payments by electronic funds transfer. If a person did not engage in a covered activity until after the beginning of the designated twelve-month review period, then the monthly tax or fee liability will be calculated based upon the number of months in which covered activities occurred (for example, in a calendar year review period, if the person obtains a permit or license and begins operations for which a tax or fee may be imposed in May, the total tax or fee liability would be divided by eight to determine the average monthly tax or fee liability since there are eight months remaining in the evaluation period).

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Revisions to Regulation 4905 (Continued)

Persons registering to report and pay a tax or fee for the first time, except certain successors, will not be required to participate in the electronic funds transfer program until a review is conducted.

A successor will be regarded as having an estimated tax or fee liability of twenty thousand dollars (\$20,000) or more per month when the monthly tax or fee liability of the predecessor equaled or exceeded twenty thousand dollars per month or the predecessor was a mandatory participant in the electronic funds transfer program. If the successor purchases a portion of a business that is required to participate in the mandatory electronic funds transfer program (e.g. a multiple outlet business that only sells some, but not all of its locations), the average monthly tax or fee liability of the purchased business will be computed to determine if the successor meets the threshold to be identified as a mandatory participant in the electronic funds transfer program.

After review, if a person drops below the threshold for mandatory participation, the Board shall provide notification, in writing, that the status has been changed from mandatory participation to voluntary participation in the electronic funds transfer program. If, at that time, a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until the taxpayer or feepayer is notified by the Board, in writing, of an effective date of withdrawal from the program. Any person who fails to comply with the mandatory participation requirements under this section shall be liable for a penalty as provided under the applicable Revenue and Taxation Code sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250.

(2) **VOLUNTARY PARTICIPATION.** Any person not meeting the criteria for mandatory participation set forth in subdivision (b)(1) of this regulation may participate in the program on a voluntary basis. A person must registerfile an authorization agreement with the Board prior to participation, ~~and must remain in the program for a minimum of one year. After that time, if~~ a person wishes to discontinue making electronic funds transfer payments, a written request must be made to the Board. Payments must continue to be remitted by electronic funds transfer until notified by the Board, in writing, of an effective date of withdrawal from the program.

- (c) **DATE OF PAYMENT.** Payment is deemed complete on the date the electronic funds transfer is initiated, if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.
- (d) **FILING OF RETURNS.** In addition to a tax or fee payment made by electronic funds transfer, a return must be filed on or before the due date. Any person who fails to comply with this provision shall be subject to penalty charges as provided under Revenue and Taxation Code sections 7659.9(d), 8760(d), 30190(d), 32260(d), 40067(d), 41060(d), 43170(d), 45160(d), 46160(d), 50112.7(d), 55050(d), and 60250(d).
- (e) **FAILURE TO PAY BY ELECTRONIC FUNDS TRANSFER.** Any person required to pay tax or fee by electronic funds transfer must continue to do so until the Board advises them otherwise in writing. Any person required to pay taxes or fees by electronic funds transfer, as set forth in subdivision (b)(1), who does not pay through electronic funds transfer but uses another means (e.g. pay by check), will be assessed a penalty as provided by Revenue and Taxation Code sections 7659.9(e), 8760(e), 30190(e), 32260(e), 40067(e), 41060(e), 43170(e), 45160(e), 46160(e), 50112.7(e), 55050(e), and 60250(e).
- (f) **ZERO AMOUNT DUE.** When no tax is due for a given period, a zero dollar transaction must be made by electronic funds transfer or the Board must receive written notification stating that no tax is due for that period.
- (g) **EMERGENCIES.** In emergency situations, a Federal Reserve Wire Transfer transaction may be used to transmit a payment. A Federal Reserve Wire Transfer is an electronic payment system used by federal reserve banks to transfer funds instantaneously. Generally, this method of payment is not approved for recurring transactions. Authorization must be received from the Board prior to making a payment by Federal Reserve Wire Transfer. The person who originates the transfer shall be responsible for any fees incurred in paying by a Federal Reserve Wire Transfer transaction.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.